IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.l430 of 2005

Anandrao N Patil by L Rs and ors.. appellants
vs
Mr Vinayak Shankar Prabhudesai.. respondent

Mr G S Godbole for appellants
Mr. R.S.Apte Amicus Curaie

CORAM; A.M.KHANWILKAR J.

DATED 2.3.2006

P.C.

l. Heard learned counsel for the parties. Admit on the same substantive question of law which was considered in Second Appeal No. l4l2 of 2005. The facts relevant for deciding the said substantive question of law are also common as is fairly accepted by the counsel for the parties.

2. The appellants had filed suit before the court of Civil Judge J D Vasai being R.C.S.No.ll0 of l998 for possession. Same was dismissed by judgment dated 28.9.l999. The trial court proceeded to decide the matter applying the provisions of the Bombay Rent Act even though the said Act was not applicable to the area in which the suit property is situated at village Chandansar, Taluka Vasai

District Thane. The matter was carried in appeal and even the appeal court dismissed the appeal answering the issue against the appellants. In similar situation in Second Appeal No. l4l2 of 2005 which was filed by the same appellants against another tenant, all the relevant contentions have been considered and answered in favour of the appellants. For the reasons recorded in the said decision dated 7.2.2006 in Second Appeal No. l4l2 of 2005 between A.R. Patil through L Rs vs P.R.Patkar, even the present appeal ought to succeed . The counsel for the parties fairly accepted this position.

3. It needs to be mentioned that initially advocate Mr.R.P.Joshi was representing the respondent. However, it was only on 27.2.2006 when this appeal was listed for hearing he informed the court that his client was interested in personally addressing the court. The matter was kept back. When the matter was called as kept back matter said R.P.Joshi did not appear. Instead respondent appeared in person in court. He was not in a position to address the court dealing with the queries put to him. In the circumstances with the consent of the respondent, I appointed Mr.R.S.Apte advocate to espouse his cause and that arrangement

was accepted by the respondent.Today, Mr Apte appearing for the respondent was not in a position to dislodge the opinion recorded by me in the cognate appeal being Second Appeal No. l4l2 of 2005 decided on 7.2.2006.In the circumstances this appeal succeeds on same terms. The impugned judgment and decree passed by the courts below are set aside.Instead, suit preferred by the appellants is decreed. Decree to be drawn in terms of the prayer clauses of the plaint with no order as to costs.

4. At this stage the respondent, who is personally present in court, prays for time to vacate the suit premises. He submits that he is not in a position to carry the matter further in appeal nor in a position to secure alternate accommodation at short notice. He has stated that he is willing to give usual undertaking to this court if this court was to grant sufficient time to vacate the suit premises. In view of this submission of the respondent, the counsel for the appellants was called upon to take instructions from the appellants whose representative, the Power of Attorney holder Ms Sushma B Patil appellant no.lB herein, was present in court. On instructions Mr.Godbole for the appellants submitted that as the

respondent has assured this court that he will voluntarily surrender the suit premises within the time granted by the court,the appellant may consider to give reasonable time to vacate maximum upto one year’s period from now. The appellants are also willing to offer a sum of Rs. 5000/- at the time when the respondent surrenders the suit premises as per the undertaking to be given to this court. The appellants further submitted that the offer may not be construed as acceptance of the claim of the respondent that he has deposited any amount with the appellants at the time of creation of the tenancy as precondition. This offer is made by the appellants having regard to the financial position of the respondents on humanitarian consideration .The respondent is agreeable to the offer given by the appellants with such usual undertaking being recorded. Accordingly the respondent is granted time to vacate upto the end of February 2007 on the terms specified by the appellants and as referred to earlier. The respondent alongwith the adult members staying with the respondent in the suit premises to file usual undertaking incorporating the aforesaid terms in this court within two weeks from today,failing which it would open to the appellants to proceed against the respondent in accordance with law.

5. While parting with this judgment the court expresses a word of gratitude to Mr. Apte for the services rendered by him as Amicus Curaie on the request made by the court.